TERRORISM PREVENTION/Deletion of Habeas Rule of Deference

SUBJECT: **Comprehensive Terrorism Prevention Act of 1995 . . . S. 735. Hatch motion to table the Biden amendment No. 1224 to the Hatch substitute amendment No. 1199.**

ACTION: MOTION TO TABLE AGREED TO, 53-46

SYNOPSIS: As reported, S. 735 will enact law enforcement provisions to prevent terrorism and to apprehend and punish terrorists, and will reform Federal and State capital and noncapital habeas corpus procedures.

The Hatch substitute amendment to S. 735 would make major revisions to the bill, particularly to the provisions regarding international terrorism, alien removal, and fundraising by terrorist organizations.

The Biden amendment would strike the rule of deference from the bill that will provide that the Federal courts will not grant a writ of habeas corpus on behalf of a State convict with respect to any claim that was adjudicated on the merits in State court proceedings "unless the adjudication of that claim (1) resulted in a decision that was contrary to or involved an unreasonable application of clearly established Federal laws as determined by the Supreme Court of the United States or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." ("Habeas corpus" in the context of this debate refers to the collateral (not on the merits) review of criminal convictions. State and Federal prisoners may file habeas corpus petitions alleging that constitutional, legal, or treaty requirements were violated in the process of convicting them. State prisoners may file petitions in State or Federal courts; Federal prisoners may file petitions only in Federal courts; District of Columbia prisoners may file petitions only in non-Federal, District courts. The right of a State prisoner to file a habeas petition in Federal court is a right that was granted by statute.)

Debate was limited by unanimous consent. Following debate, Senator Hatch moved to table the Biden amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

(See other side)

YEAS (53)

Republicans (47 or 87%)		Democrats (6 or 13%)
Abraham	Helms	Baucus
Ashcroft	Hutchison	Byrd
Bennett	Inhofe	Feinstein
Bond	Kempthorne	Lieberman
Brown	Kyl	Reid
Burns	Lott	Rockefeller
Campbell	Lugar	
Coats	Mack	
Cochran	McCain	
Coverdell	McConnell	
Craig	Murkowski	
D'Amato	Nickles	
DeWine	Pressler	
Dole	Roth	
Domenici	Santorum	
Faircloth	Shelby	
Frist	Simpson	
Gorton	Smith	
Gramm	Specter	
Grams	Stevens	
Grassley	Thomas	
Gregg	Thompson	
Hatch	Thurmond	
	Warner	

NAYS (46)

Republicans (7 or 13%)	Democrats (39 or 87%)	
Chafee	Akaka	Inouye
Cohen	Biden	Johnston
Hatfield	Bingaman	Kennedy
Jeffords	Boxer	Kerrey
Kassebaum	Bradley	Kerry
Packwood	Breaux	Kohl
Snowe	Bryan	Lautenberg
	Bumpers	Leahy
	Daschle	Levin
	Dodd	Mikulski
	Dorgan	Moseley-Braun
	Exon	Moynihan
	Feingold	Murray
	Ford	Nunn
	Glenn	Pell
	Graham	Pryor
	Harkin	Robb
	Heflin	Sarbanes
	Hollings	Simon
		Wellstone

NOT VOTING (1)

Republicans (0)	Democrats (1)
	Conrad-[2]

EXPLANATION OF ABSENCE:
1—Official Buisiness
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

The Biden amendment would strike the single most important habeas corpus reform proposal in S. 735, which will set the standard of deference that Federal courts must give to the decisions of State courts. Under current practices, Federal courts have virtual de novo review of States' decisions. No deference is given to their determinations. In other words, as far as current Federal practice goes, State decisions are meaningless. Any case is open to habeas corpus review at the Federal level; the automatic assumption is that a State court's application of Federal and constitutional law has no weight and need not be considered in granting a habeas writ. The current standard is no standard.

This bill will instead require a reasonableness standard. Federal courts will be able to overturn State decisions that are clearly in violation of Federal law or that improperly apply clearly established Federal law. This standard is wholly appropriate. State courts are constrained to uphold the Constitution and to apply faithfully Federal law just as Federal courts are. The vast majority of capital cases are tried at the State level, so most of the experience at applying Federal requirements to capital cases has occurred at the State level.

In hearing after hearing, and debate after debate, we have challenged opponents of reform to tell us of even one case in which Federal habeas corpus review resulted in an innocent man being set free. No case has been brought forward. Cases such as the Rubin Carter case, which our colleagues have mentioned, hardly make the case for allowing Federal review. In that case, this man who had been twice convicted of three murders and whose convictions had been repeatedly upheld on appeal was released by one of the most liberal judges on the Federal bench, Lee Sarokin, on a procedural question due to the composition of his jury. Even the liberal New York Times criticized his release by saying that Sarokin's decision was "flawed by excessive lecturing on the need for 'compassion' and the injustice of a possible third trial." Frankly, we want courts that are concerned with justice, not compassion. In our opinion, to put it quite bluntly, States have been adept at applying the death penalty constitutionally and in full compliance with all Federal laws, and Federal judges have been just as adept at improperly applying the Constitution and Federal laws to overturn those decisions. Senators who oppose the death penalty may argue that Federal courts are better at applying the Constitution, but they and we are aware that the main role of the Federal courts has been to overturn and delay death penalty decisions.

S. 735 will stop this practice by requiring Federal courts to let stand any State judgment that is reasonable. A Federal judge will not be permitted to substitute his or her opinion on whether the Constitution and Federal laws have been followed for a State court's opinion. Only if the State court has clearly violated a Federal requirement will a Federal judge be allowed to step in. This limitation on Federal review, more than the tolling requirements and other reforms in this bill, will prevent frivolous habeas appeals from clogging the Federal courts. The Biden amendment would strike this limitation, so we emphatically support the motion to table it.

Those opposing the motion to table contended:

The primary difference between the habeas corpus reforms that have been proposed by Senator Hatch in this bill and by Senator Biden in his competing legislation is that the Hatch language will require the Federal Government to defer to State decisions if they are reasonable. Assume, for example, that a person is convicted in a State court in which the prosecution withheld the fact that an eyewitness testified that he had never met the accused before the crime, when in fact he had carried a grudge against the accused for the past 20 years. A State could decide that the prosecution had not been honest, and that if this information had been given to the jury it would have made it difficult to reach a guilty verdict, and it would then order a new trial. Alternatively, though, it could decide that this dishonesty did not prove the innocence of the accused, and that therefore the conviction would stand. Either conclusion would be reasonable; in either case, the Federal Government would have to defer to the States' judgment.

In one real-life case, a man named Rubin "Hurricane" Carter was convicted after the police failed to tell the court that one witness who testified against Carter had first said that Carter was innocent. He changed his testimony after police falsely told him that a polygraph he had taken during his first statement showed that he had been lying. The State of New Jersey, which tried to stop Federal habeas review, argued that this fact would not have changed the outcome of the case. The Federal court disagreed, and wound up ruling that Carter had been improperly convicted. The State then decided that it would not seek a retrial, and Carter was released after 20 years in prison. If the "reasonable" test that is in this bill had been in effect, the Federal court would not have been allowed to consider Hurricane Carter's appeal, and he would be in prison still, as would numerous other prisoners who have been unjustly imprisoned. We are not arguing that police and prosecutorial misconduct is common; we are instead arguing that it does occur, and sometimes States refuse to provide proper redress. If this standard becomes law, 50 different systems of applying the Constitution will develop as States decide cases and create their own unique precedents. They will broadly follow Supreme Court precedent, but in the grey, unsettled areas of the law, which any lawyer knows cover a tremendous amount of territory, they will develop their own interpretations that, as long as they are reasonable, will not be subject to review by Federal judges.

This result would be damaging to our Nation. The Constitution should be applied in exactly the same manner in all 50 States. Federal habeas review should not be limited to all but the most obvious miscarriages of justice; Federal judges should be able to review all applications of Federal law. The problem with our current system is that prisoners are able to file endless appeals. The solution to that problem is to establish strict requirements for filing and disposing of those appeals. Both the Biden bill and this bill establish such requirements. This bill, though, also will deny Federal habeas relief in nearly every case with its section on deference to State provisions. The Biden amendment would strike that section, and thus merits our support.